

Subject: Direction by the Mayor of London
Agenda item: Public item 11
Report No: 8
Meeting date: 25 June 2013
Report to: Board
Report of: Jan Boud, General Counsel

FOR INFORMATION

This report will be considered in public

1. SUMMARY

- 1.1. This paper informs the Board about the Mayoral Direction that will shortly be issued by the Mayor of London. This Mayoral Direction replaces the Memorandum of Understanding with the Greater London Authority that was originally proposed and that was approved by the Board at its meeting of 5 December 2012.

2. RECOMMENDATIONS

- 2.1 The Board/Committee members are invited to **NOTE** the issue of the Mayoral Direction by the Mayor of London and its contents.

3. BACKGROUND

- 3.1. At the Board meeting of 5 December 2012, the Board approved the entry by LLDC into a Memorandum of Understanding (**MoU**) with the Greater London Authority (**GLA**) to provide clarity of expectations with regard to the relationship between the two organisations. At the Board meeting it was noted that the GLA intended to issue a Mayoral Direction to underpin some of the provisions in the MoU (in particular those requiring LLDC to obtain consent from the Mayor for any significant expenditure and income).
- 3.2. Following the Board meeting, further discussions took place between LLDC and the GLA in relation to this matter. At that point LLDC was informed that the GLA had resolved not to enter into the MoU, but instead to insert substantially all of the provisions of the MoU into the proposed Mayoral Direction.
- 3.3. The Mayoral Direction covers the following issues:
- 3.3.1. Approval of budgets and business plans, which sets out how the Corporation will secure the Mayor's agreement to its budgets and business plans;
 - 3.3.2. Mayoral approval of certain decisions by LLDC and its subsidiaries, including approval of business cases above specified thresholds, approval (above thresholds to be agreed) of land transactions covered by

- the Mayor's agreement with the Department for Culture Media and Sport, approval of borrowing, and other matters set out in the Localism Act;
- 3.3.3. A duty to provide information to the GLA in relation to the use by LLDC of the general powers delegated to it by the Mayor of London;
- 3.4. Notable changes set out in the Mayoral Direction as compared to the MoU are the following:
- 3.4.1. The provision dealing with the attendance of the Mayor's observer at meetings of the Board and Committees of LLDC have been deleted. However, LLDC's current standing orders still allow the Mayor's observer to attend and speak at such meetings and any significant change to those standing orders will now require Mayoral consent.
 - 3.4.2. Consent is now required for all land transactions as defined in the Mayor's agreement with DCMS regarding the return of Lottery funding. In the MoU it was anticipated that the Mayor would issue a standing consent for land transactions up to a defined value or description. However, the Mayoral Direction allows the Mayor's delegated officer to issue general consents, so LLDC could still request a general consent if that is considered expedient.
 - 3.4.3. In the MoU, LLDC was required to consult the GLA before formally submitting its budget and business plan to its Board and the Mayor. In the Mayoral Direction, this now requires consent from the Mayor. This change is not material since the Mayor sets LLDC's budget and borrowing limit in any event.
 - 3.4.4. LLDC's duty to report on the use of the Mayor's delegated powers has been relaxed to lessen the administrative burden.

4. FINANCIAL IMPLICATIONS

- 4.1. There are no direct financial implications associated with the Mayoral Direction. Any associated administrative burden of compliance with the direction will be met using LLDC's existing staff.

5. LEGAL IMPLICATIONS

- 5.1. Section 220 (1) of the Localism Act 2011 provides the Mayor of London with a power to issue general or specific directions to a Mayoral Development Corporation (MDC) as to the exercise of any of that MDA's functions.
- 5.2. Many of the provisions of the Mayoral Direction that require LLDC to obtain consent from the Mayor replicate consent requirements already set out in the Localism Act 2011. In addition, where the Direction requires LLDC to provide information to the GLA, LLDC would be required to provide that information in any event under Sections 110, 125 and 395 of the Greater London Authority Act 1999.
- 5.3. Section 220 (4) of the Localism Act 2011 provides that an MDC must comply with any directions issued by the Mayor that are in force in relation to the MDC. This means that any decision or action taken by LLDC in breach of the Mayoral Direction will be *ultra vires* and could result in that decision being quashed in a judicial review.
- 5.4. Section 220 of the Localism Act 2011 does not give the Mayor of London a power to issue directions to a subsidiary of LLDC. However, the Mayoral Direction requires LLDC to exercise its control or other powers in respect of that subsidiary to secure that complies with the Mayoral Direction. It should be noted that the GLA accepts that E20 Stadium LLP is not a subsidiary of LLDC.

6. APPENDICES

6.1. Appendix 1 – Draft Mayoral Direction

List of Background Papers:

- Localism Act 2011
- Report 11, Board Meeting 5 December 2012

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**LOCALISM ACT 2011
MAYORAL DIRECTION**

**LONDON LEGACY DEVELOPMENT CORPORATION
GOVERNANCE DIRECTION 2013**

**LLDC AND SUBSIDIARIES
FINAL**

COMING INTO FORCE: 1 July 2013

**LONDON LEGACY DEVELOPMENT CORPORATION
GOVERNANCE DIRECTION 2013**

BACKGROUND

- A. In order to provide an appropriate degree of scrutiny and accountability for the activities and larger projects of the London Legacy Development Corporation (“LLDC”), the LLDC and the Greater London Authority (“GLA”) have agreed to put in place a mechanism by which the GLA will adopt a consultation and approval function for certain matters relating to LLDC’s governance, where the consent of the Mayor is required under the Localism Act 2011 and otherwise where it has been agreed that such consent is necessary, including in relation to certain decisions of LLDC’s Subsidiaries.
- B. It is now intended to formally record and implement that arrangement by way of a Mayoral direction to LLDC pursuant to section 220 of the Localism Act 2011.
- C. This document (“the Direction”) is called the London Legacy Development Corporation Governance Direction 2013.

MAYORAL DIRECTION

In accordance with section 220 of the Localism Act 2011 **I hereby direct** that from 1st day of July 2013 the London Legacy Development Corporation shall exercise its functions so as to comply with the requirements of this Direction, as set out below.

PART 1: INTRODUCTORY MATTERS

Definitions

1.1 In this Direction the following words and phrases are defined as follows unless the context otherwise requires:

“Application” means an application in respect of a consultation under Part 2 below or an application for Consent under Parts 3 or 4 by LLDC either on its own behalf or on behalf of a Subsidiary (as the case may be);

“Consent” means the consent of the Mayor:

- as required by the provisions of the Localism Act 2011 listed in paragraph 3.1 below; and
- in respect of the matters for which Consent is required under paragraphs 3.2, and 4.1 to 4.7 below.

“Executive Director” means the Executive Director of Housing and Land or such other member of GLA staff authorised under the Mayoral Scheme of Delegation (as amended) to exercise the Mayor’s powers under this Direction, and the term includes the Mayor should he or she decide to exercise them personally;

“Financial Threshold” means the threshold of £10 million (ten million pounds) for Regulated Commitments referred to in paragraph 4.7 below;

“functions” includes LLDC’s powers and duties, whether arising under statute or otherwise;

“General Grant Consent 2012” means the General Mayoral Consent to the Giving of Financial Assistance by Grant 2012 approved under DD854, a copy of which is at Annex 2;

“GLA” and *“GLA Act 1999”* means the Greater London Authority and the Greater London Authority Act 1999 (as amended);

“National Lottery Fund Repayment Agreement” means the agreement between the Mayor and the Secretary of State for Culture, the Olympics, Media and Sport dated 29 March 2012 regarding the return of capital receipts from such disposals to the National Lottery and HM Treasury;

“Regulated Commitment” is as defined in paragraph 4.7 below; and

“Subsidiary” refers (subject to any applicable statutory definition of the term in the Localism Act 2011) to a body which must be treated as a subsidiary of LLDC under CIPFA’s Code of Practice on Local Authority Accounting in the United Kingdom as amended from time to time.

1.2 A reference to the internal approval mechanisms of LLDC or any Subsidiary includes the approval of that body’s board or any committee, subcommittee, member or officer of the body in question acting under delegated powers.

Exercise of powers under Direction

1.3 The Executive Director will exercise the Mayor’s function under this Direction including:

- a) responding on behalf of the Mayor to consultations under Part 2 below;
- b) processing Applications under Parts 2 to 4;
- c) determining such Applications, including whether to refuse or to grant Consent and what conditions (if any) to impose; and
- d) determining any matter under Part 5 below or otherwise provided for in this Direction.

1.4 The Executive Director may generally or specifically waive any requirement under this Direction including a requirement to obtain Consent if not otherwise required by statute.

Application of Direction to LLDC Subsidiaries

1.5 Where an obligation to obtain Consent or to comply with some other requirement is imposed by or under this Direction upon a Subsidiary then LLDC is directed by the Mayor under section 220 of the Localism Act 2011 to exercise its control or other powers in respect of the Subsidiary to secure that the latter obtains Consent, complies with any conditions to a Consent has been granted, and does not otherwise breach the terms of this Direction.

Effect of Direction

1.6 Where under this Direction:

- a) Prior Consent is required (paragraphs 4.1, 4.3, 4.4 and 4.5 only) then LLDC and its Subsidiaries must obtain Consent before their Boards or other internal decision-making mechanism gives any binding approval to the matter on behalf of that body;
- b) Prior Consent is not required then LLDC or Subsidiary may (as they wish) take a decision to approve the matter with or without having first obtained Consent provided that

- i. the decision in question is expressed to be contingent upon Consent under this Direction being obtained; and
- ii. LLDC or Subsidiary shall not act upon or implement their decision nor enter into any legally binding commitment to do so until Consent is formally granted.

1.7 Any agreement, consent or other approval given by the Mayor in his capacity as chair of LLDC or Subsidiary is not to be regarded as providing Consent for the purposes of this Direction.

- 1.8 Nothing in this Direction fetters or restricts:
- a) the Mayor's ability to delegate functions to LLDC under sections 38 or 380 of the GLA Act 1999;
 - b) the Mayor's ability to give guidance or to give general or specific directions or consent to LLDC as to the exercise of any of its functions under sections 219 and 220 of the Localism Act 2011;
 - c) the Mayor's ability require LLDC to furnish him with information to which he is entitled under the GLA Act 1999, including under sections 110 and 395; or
 - d) the London Assembly's powers under sections 61 to 63 or section 110 of the GLA Act 1999;
 - e) the Mayor's or GLA's obligations under the Freedom of Information Act 2000.

1.9 The arrangements under this Direction are subject to any expectations expressed by Government as part of its grant to the GLA.

PART 2: MATTERS ABOUT WHICH THE MAYOR MUST BE CONSULTED

- 2.1 The Mayor shall be consulted before:
- a) LLDC adopts or makes any significant changes to its Standing Orders or other rules of procedure;
 - b) LLDC adopts or makes any significant changes to its Scheme of Delegation;
 - c) LLDC or any Subsidiary approves that body's budget and business plan for the purpose of their formal submission to the GLA as part of the GLA Group's annual statutory budget approval process;
 - d) LLDC determines any matter delegated by the Mayor to LLDC under section 38 of the GLA Act 1999 where the delegation in question stipulates that the Mayor shall be consulted first.

PART 3: CONSENTS UNDER THE LOCALISM ACT 2011

3.1 Consent must be obtained under the Localism Act 2011 to the following matters (subject to the relevant provision of that Act in question):

- a) submitting a compulsory purchase order (section 207);
- b) disposing of land for less than the best consideration which can reasonably be obtained or which has been compulsorily acquired under the Act (section 209);
- c) forming or acquiring interests in bodies corporate (section 212);
- d) permitting a Subsidiary to borrow money or raise finance by the issue of stocks and shares otherwise than from the LLDC (section 212);

- e) subject to paragraphs 2.3 below, the giving financial assistance to any person (section 213);
- f) the terms and conditions on which staff are to be appointed (Schedule 21, paragraph 3);
- g) determining the rates and eligibility criteria for staff remuneration, travelling and other allowances and pensions and gratuities (Schedule 21, paragraph 4); or
- h) appointing persons who are not members of the LLDC's board to a committee or sub-committee of the LLDC (Schedule 21, paragraph 6).

Consent to financial assistance by way of grants under section 213

- 3.2 Consent must be obtained under this Direction to any financial assistance by LLDC that does not fall within the scope of the General Grant Consent 2012 or which cannot fulfil its terms.

PART 4: REQUIREMENT FOR CONSENT IN OTHER CIRCUMSTANCES

Appointment of LLDC's Chief Executive

- 4.1 Prior Consent must be obtained to the appointment by the LLDC of a chief executive.

LLDC's and Subsidiaries' core business plans

- 4.2 Before the end of each financial year, and in consultation with relevant GLA officers, LLDC and any Subsidiary shall prepare a detailed core business plan for the following year as part of a 3-year rolling business planning process, including changes to base-line pay for the year covered by the budget, borrowing limits and prudential indicators for the next three years –

- 4.3 Prior Consent must be obtained to the LLDC's or Subsidiary's board or other relevant decision making mechanism considering any draft core business plan for approval.

LLDC's and Subsidiaries' borrowings

- 4.4 Prior Consent must be obtained to any item of borrowing by LLDC or a Subsidiary which:
- a) has not been approved by the Board or other relevant decision making mechanism of LLDC or Subsidiary as part of that body's annual budget; or
 - b) is not within the scope of the prudential borrowing limit approved by the Mayor for the year in which the item arises under section 3 of the Local Government Act 2003.

Land Transactions relevant to the GLA's obligations to the National Lottery and Treasury

- 4.5 Prior Consent must be obtained to any decision by LLDC or Subsidiary to approve a 'Land Transaction' as defined in Clause 2 of the National Lottery Fund Repayment Agreement regarding returns to the Lottery and Treasury and LLDC shall in advance share with GLA the details of all such anticipated Land Transactions.
- 4.6 Neither LLDC nor any Subsidiary shall do anything to place the Mayor in breach of his obligations under the National Lottery Fund Repayment Agreement and they shall furnish the Executive Director with such information as he considers necessary to ascertain there is compliance with the Agreement.

Regulated Commitments by LLDC and Subsidiaries

4.7 Subject to paragraphs 4.8 and 4.9 below, Consent must be obtained to LLDC or a Subsidiary making any individual decision that commits expenditure, creates a contingent liability and/or generates income of a value of £10 million or more (“a Regulated Commitment”) where that expenditure, liability and income :

- a) was not contained in the business plan of LLDC or its Subsidiary for the financial year in which it arises, or
- b) was included in that business plan but the actual value compared to its anticipated value in the plan is 5% or more downwards in the case of income or 5% or more upwards in the case of expenditure or a contingent liability.

4.8 For the avoidance of doubt Land Transactions falling within paragraph 4.5 above (National Lottery Fund Repayment Agreement) are excluded from the definition of Regulated Commitment in paragraph 4.7 above and Consent in respect of those transactions should be sought under paragraph 4.5.

4.9 In determining whether the value of a project equals or exceeds the Financial Threshold for the purposes of paragraph 4.7 above –

- a) Regard shall normally be had to its total estimated expenditure for the project;
- b) For projects delivered through partnerships and for which grant is paid to another body, regard shall be had to their estimate of total grant to be paid for the project over its whole lifetime;
- c) Projects must not be artificially split so as to portray what is properly regarded as a single item of expenditure or a single project as if it were two or more such items or projects each falling under the Financial Threshold;
- d) Similarly non-project expenditure should not be artificially split;
- e) Account must be taken of all contingent liabilities, including guarantees to be given, whether during or after the lifetime of the project.
- f) Non-cash costs including losses on disposal and cost of capital should be included in consideration of whether the Financial Threshold is exceeded; and
- g) Any receipts received, or expected to be received, in connection with the project and flowing through that body’s books (e.g. EU Structural Funds and any funds held in separate bank accounts) shall count towards the total estimated expenditure.

4.10 “Project” in paragraph 4.9 above means a unique set of coordinated activities with definite starting and finishing points undertaken by an individual or team, to meet specific objectives with defined time, cost and performance parameters.

PART 5: ADMINISTRATIVE MATTERS

Applications for Consent

- 5.1 LLDC shall provide the Executive Director with a quarterly forecast of all Relevant Commitments, other projects, proposals and matters which it anticipates will require Consent under Parts 3 or 4 of this Direction and, as and when required, shall keep the Director informed about any significant issues affecting them, including any applicable developments, deadlines and dependencies.
- 5.2 Where an Application relates to a matter for which a Subsidiary requires Consent, then LLDC shall make the application on the Subsidiary's behalf and be responsible for handling all matters concerning the application, including liaising between the GLA and the Subsidiary.
- 5.3 Applications shall:
- a) be submitted by LLDC (or by LLDC on behalf of a Subsidiary) in a timely manner and so as to allow sufficient and appropriate time for GLA officials to consider the matter;
 - b) clearly identify the subject matter of the consultation or in respect of which Consent is sought under Parts 3 or 4 by using one or more of the relevant identification codes listed in Annex 1;
 - c) clearly state any relevant deadlines or dependencies;
 - d) be supported by a business case that contains the same information and is in the same format as LLDC or Subsidiary would normally use for its own internal approval processes (provided always that the Executive Director may require such further information or clarification as he or she considers necessary in the circumstances).
- 5.4 The Executive Director shall endeavour to determine the Application as soon as reasonably practicable following receipt, having regard to any relevant deadlines or dependencies stated in the Application and any information to be supplied by LLDC.
- 5.5 If the Executive Director is minded to refuse Consent then he/ she shall consult LLDC or Subsidiary before formally determining the Application.
- 5.6 Any Consent given under this Direction:
- a) shall be confirmed in writing by or on behalf of the Executive Director;
 - b) may be given unconditionally or subject to conditions;
 - c) may be given in relation to a particular case or in relation to such categories or descriptions of cases as may be specified in the Consent, including under a general consent under section 221 of the Localism Act 2011;
 - d) shall, unless otherwise stated in the decision, grant Consent to all the matters for which it was sought in the Application;
 - e) may be varied or revoked by a notice in writing given by the Executive Director to LLDC or Subsidiary (but no variation or revocation may be made in relation to anything which the body in question has already done or where it has already entered into a legally binding commitment upon the authority of a Consent that has been given).

EXECUTION

Signature

Boris Johnson
Mayor of London

Dated 2013

ANNEX 1

Identification Codes

Code

Requirements under Direction		
<i>C.1</i>	Consultation on significant changes to LLDC Standing Orders	Paragraph 2.1 (a), Direction
<i>C.2</i>	Consultation on significant changes to LLDC Scheme of Delegation	Paragraph 2.1 (b), Direction
<i>C.3</i>	Consultation prior to submission of LLDC's budget and business plan to its Board	Paragraph 2.1 (c), Direction
<i>C.4</i>	Consultation prior to determining matters delegated by Mayor to LLDC	Paragraph 2.1 (d), Direction
<i>D.1</i>	Prior Consent to the appointment of LLDC chief executive	Paragraph 4.1, Direction
<i>D.2</i>	Prior Consent to the submission to the Board of LLDC's core business plan	Paragraph 4.2, Direction
<i>D.3</i>	Prior Consent to LLDC borrowings	Paragraph 4.3, Direction
<i>D.4</i>	Prior Consent to "Land Transactions" under clause 2 of, the National Lottery Fund Repayment Agreement where disposal by LLDC or a Subsidiary	Paragraph 4.4, Direction
<i>D.5</i>	Consent to a Regulated Commitment by LLDC or a Subsidiary	Paragraph 4.7, Direction
Requirements under Localism Act 2011		
<i>L.1</i>	Submitting a compulsory purchase order	section 207
<i>L.2</i>	Disposing of land for less than the best consideration which can reasonably be obtained or which has been compulsorily acquired under the Act	section 209
<i>L.3</i>	Forming or acquiring interests in bodies corporate	section 212 (2)
<i>L.4</i>	Permitting a subsidiary to borrow money or raise finance by the issue of stocks and shares otherwise than from the LLDC	section 212(4)

L.5	Giving financial assistance to any person outside the scope of the General Mayoral Consent to the Giving of Financial Assistance by Grant 2012 (including where its conditions cannot be fulfilled)	section 213
L.6	Terms and conditions on which staff are to be appointed	Schedule 21, paragraph 3
L.7	Determining the rates and eligibility criteria for staff remuneration, travelling and other allowances and pensions and gratuities	Schedule 21, paragraph 4
L.7	Appointing persons who are not members of the LLDC's board to a committee or sub-committee of the LLDC	Schedule 21, paragraph 6

ANNEX 2

General Mayoral Consent to the Giving of Financial Assistance by Grant 2012

(Not attached to this draft)

ANNEX 3

London Legacy Development Corporation General Powers Delegation 2012

(Not attached to this draft)